IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: JUNE 11, 2015
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000755-MR

CHARLES A. SHORT — APPELLANT

V.

ON APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
NO. 12-CR-00600

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The police met Charles Short as he exited his motel room trailed by the unmistakable chemical odor associated with making methamphetamine. The police detained Short on the spot and obtained a search warrant for the motel room, which revealed assorted paraphernalia used in the manufacture of methamphetamine.

A circuit court jury later convicted Short of manufacturing methamphetamine and being a first-degree Persistent Felony Offender and recommended twenty-eight years' imprisonment. The trial court adopted the jury's recommendation and sentenced Short accordingly. Short now appeals his conviction to this Court as a matter of right,[1] presenting two main issues for our review. We find Short's arguments unpersuasive and affirm his conviction and sentence.

[1] Ky. Const. § 110(2)(b).

I. FACTUAL AND PROCEDURAL BACKGROUND.

A concerned citizen approached two police officers and informed them of a fight at a nearby motel. The officers radioed for backup and headed to the motel. Four officers in total canvassed the motel in search of the alleged fight—two searched the upstairs portion of the motel, while two investigated the downstairs. The investigation failed to locate the fight; but as the officers gathered at the scene to confer, a woman emerged from one of the rooms releasing a strong chemical odor from inside the room. Suspecting an active methamphetamine lab, the officers stopped the woman and questioned her. As one of the officers approached the room, Short emerged and immediately shut the door. Short told the police that the odor was simply the smell of nail polish. Unconvinced, the officers asked Short to consent to a search of the room. He refused, so the officers sought a search warrant.

The search produced an array of ingredients and devices common to the act of manufacturing methamphetamine, including: tubing and digital scales in the bathroom; a liquor bottle with tubing protruding from the top and a sludge-like mixture inside, which was described as a hydrochloric-acid generator in the process of manufacturing methamphetamine; a jar with a filter on top and liquid inside with crystals that tested positive for methamphetamine collected on the filter; and a vial of a substance that tested positive for methamphetamine, liquid fire drain cleaner, Coleman fuel, starting fluid, Heet gas-line antifreeze, ammonium nitrate—all inside a duffel bag. The specialty unit tasked with dismantling suspected methamphetamine labs processed the

scene and photographed all evidence. As a result of the search, police arrested Short, who was later indicted for manufacturing methamphetamine; being a PFO 1; and several charges of wanton endangerment, which were later dismissed by directed verdict.

Before trial, the Commonwealth offered Short a plea deal whereby the case would be resolved and Short sentenced to fifteen years' imprisonment. But Short refused the plea deal and elected to proceed to a jury trial. And the jury found him guilty of all charges and recommended twenty-eight years' imprisonment.[2] The trial court imposed the sentence and this appeal followed.

II. ANALYSIS.

A. The Trial Court did not Abuse its Discretion by Denying Short a Competency Hearing the day Before Trial.

For his first assignment of error, Short alleges the trial court erroneously denied his motion for a competency evaluation. The day before jury selection was to begin, Short's counsel moved the court for a competency evaluation to determine whether Short could stand trial. Counsel premised the motion on a conversation with Short two days before during which Short intimated that he had suffered brain damage, including memory loss, from various heart procedures in the recent past. At some point during those procedures, Short was allegedly deprived of oxygen for an unknown period of time. Short's counsel did not present any indication of how this revelation had affected

[2] As a result of Short's PFO 1 conviction, this sentence requires service of at least ten calendar years. Notably, the plea offered Short by the Commonwealth allowed Short to avoid this requirement.

Short's competency to stand trial or provide to the trial court any examples of Short's alleged incompetency. The trial court denied the request.

Before a defendant may be tried or sentenced, he must be determined to be competent. Generally speaking, this is presumed because there is a general presumption—in the absence of evidence to the contrary—that every defendant is competent to stand trial.[3] A defendant is incompetent to stand trial only when, "as a result of [a] mental condition, [he lacks the] capacity to appreciate the nature and consequences of the proceedings against [him] or to participate rationally in [his] own defense."[4] Likewise, the Supreme Court has outlined the incompetency determination as "whether [a defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him."[5]

Our law is clear regarding when a competency evaluation is required: "If upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court *shall* appoint at least one (1) psychologist or psychiatrist to examine, treat and report on the defendant's mental condition."[6] Accordingly, a competency hearing is *mandated* if "reasonable grounds," *i.e.*, "sufficient,

---

[3] *See Gabbard v. Commonwealth*, 887 S.W.2d 547, 551 (Ky. 1994).

[4] Kentucky Revised Statutes (KRS) 504.060(4).

[5] *Keeling v. Commonwealth*, 381 S.W.3d 248, 262 (Ky. 2012) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

[6] KRS 504.100(1).

specific facts pointing toward incompetence,"[7] exist to question the defendant's competency to stand trial. However, whether reasonable grounds exist to believe the defendant is incompetent is "within the trial court's sound discretion . . . ."[8] Therefore, our standard of review on appeal is "whether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial."[9] Essentially, did the trial court abuse its discretion in finding no reasonable grounds to question the defendant's competency?

We find no abuse of discretion. Short dealt with the trial court on many occasions leading up to trial, and at no point was his competency questioned. In fact, the only suggestion of incompetency argued on appeal is Short's refusal of the Commonwealth's plea offer. Certainly, the plea offered provided the opportunity for more lenient punishment than Short ultimately received; but Short's rejection of that opportunity, by itself, does not suggest incompetence. In fact, the trial court engaged in a lengthy colloquy with Short about the plea and the ramifications of rejecting the plea. During this colloquy, Short stated, "I want a jury trial. I understand your point, but I'm innocent and [it'll] come out." Short even acknowledged that he had read the Commonwealth's discovery and received advice from his fellow inmates. Throughout pre-trial

---

[7] *Padgett v. Commonwealth*, 312 S.W.3d 336, 346 (Ky. 2010).

[8] *Woolfolk v. Commonwealth*, 339 S.W.3d 411, 423 (Ky. 2011).

[9] *Id.* (quoting *Turner v. Commonwealth*, 153 S.W.3d 823, 832 (Ky. 2005)) (alteration omitted).

proceedings, Short maintained his innocence and desired a trial to prove his innocence. Indicia of incompetence are absent from this record.

In itself, a defendant's choice to exercise his constitutional right and proceed to trial is insufficient to create "reasonable grounds" to question his competency to stand trial. If it is permissible for a defendant to plead guilty and seek the death penalty, surely it is permissible for a defendant to reject a plea for a lesser period of incarceration and proceed to trial.[10] To hold a defendant may be incompetent simply because he asserts his innocence in the face of evidence to the contrary or desires to risk lengthy incarceration in defense of his innocence would be to eviscerate the presumption of innocence upon which our criminal system is built. And it seems rather absurd to hold a defendant lacks the capacity to appreciate the nature and consequences of the proceedings against him or is unable to participate rationally in his own defense when he is so obviously participating in his own defense. Whether his decision to reject a plea was an objectively good decision is not the question. The vague assertions of brain damage or memory loss, without more, did not overcome the presumption Short was competent to stand trial. The trial court simply did not act arbitrarily, unreasonably, unfairly, or contrary to sound legal principles[11] in finding no reasonable grounds existed to question Short's competency.

---

[10] *See Chapman v. Commonwealth*, 265 S.W.3d 156, 175-77 (Ky. 2007).

[11] *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

B. The Instructional Video Depicting Manufacturing Methamphetamine was Irrelevant but Harmless.

For his second assignment of error, Short argues the trial court erroneously allowed the Commonwealth to show the jury a police training video pertaining to the process of manufacturing methamphetamine. In Short's view, the admission of this video violated several rules of evidence, as well as the Sixth Amendment's Confrontation Clause. We agree with Short that the video was irrelevant, but we conclude its admission harmless.

At trial, the Commonwealth called to the stand Detective Alex Wright of the local police department. Wright was also a member of the regional drug task force and had been trained extensively on detecting and eliminating so-called clandestine drug operations. During Wright's testimony, the Commonwealth moved to play a video commonly used in police training detailing the steps of the methamphetamine manufacturing process. Noting that the video was irrelevant and prejudicial, Short renewed his pretrial objection and sought a ruling on the issue, thereby preserving the issue for our review. The trial court overruled Short's objection, finding the video a helpful piece of demonstrative evidence to explain in more detail the process of manufacturing methamphetamine and the danger involved.

The video depicted lab technicians going through the process of manufacturing methamphetamine via the "one pot" method. The sound was muted and Detective Wright narrated the video, including discussing and reading the captions that appeared at each step in the process. The

Commonwealth does not dispute that the video was merely educational and not representative of the lab Short was alleged to have operated in his motel room.

Short argues the video violated Kentucky Rules of Evidence (KRE) 402, 403,[12] and 602.[13] In addition, Short asserts the text of the captions on the video violated the Confrontation Clause.[14]

We focus on KRE 402 and 403 because those arguments are the only two of merit. The overarching principle of our evidentiary rules is that all relevant evidence is admissible, except as otherwise provided by constitutional law, statute, our evidentiary rules, or other rules adopted by this Court. To be relevant, evidence must have some "tendency to make the existence of any fact

---

[12] KRE 403 permits the exclusion of otherwise relevant evidence "if its probative value is substantially outweighed by the danger of undue prejudice . . . ." The probative value of this video was essentially nil. The probative value was so low, in fact, that any degree of prejudice—outside the normal prejudice inherent in the presentation of inculpatory evidence—would substantially outweigh it. We hold the evidence is irrelevant so we need not reach this issue.

[13] KRE 602 prohibits a witness from testifying "to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Short argues Detective Wright's narration was impermissible because he had no personal knowledge of the filming of the video and was not seen on the video. This argument is rather creative because Detective Wright may not have participated in the filming or appeared in the video, but he testified to the manufacturing process depicted in the video, not what camera was used or other detail of video production. Detective Wright, as a well-trained officer in methamphetamine lab cleanup and detection, certainly had personal knowledge of the manufacturing process. In any event, this allegation of error is unpreserved—to the extent there was error, it was not palpable. Kentucky Rules of Criminal Procedure (RCr) 10.26.

[14] Without delving into the depths of Confrontation Clause jurisprudence, suffice it to say that Detective Wright's testimony was not violative of Short's constitutional rights. Perhaps the captions on the screen could be considered testimonial evidence for purposes of the Confrontation Clause; but even if we were to conclude such, Detective Wright read aloud each caption or paraphrased the caption and then elaborated on the caption. Any issues Short had with the captions could have been fleshed out in cross-examination of Detective Wright because he adopted them in his testimony.

that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[15]

The video in question does not appear to be relevant to any material fact at issue in Short's prosecution. Short was on trial for manufacturing methamphetamine, and the video depicted that process; but no testimony was offered to indicate the video depicted any process in which Short engaged. Instead, the video simply demonstrated the most common method of making methamphetamine. So for roughly twenty trial minutes, Detective Wright lectured the jury on the specific steps in manufacturing methamphetamine in the general sense. This demonstration proves no material fact in question.

The Commonwealth argues Detective Wright was an expert and the video helped him explain to the jury what ingredients were used in making methamphetamine and how methamphetamine could be created in the area the size of a motel room. The video does no such thing. In fact, Detective Wright more clearly accomplished these goals *after* the video when he discussed in detail the photographs taken of Short's motel room and the various methamphetamine-manufacturing components found in it. The Commonwealth's case was sufficient without the video. And our review of the video leaves us at a loss to discern any fact of consequence to the determination of this prosecution was more or less probable than it otherwise would have been if the video had not been introduced.

---

[15] KRE 401.

But admission of the video was harmless in light of the evidence presented against Short. The search of Short's room produced methamphetamine, a host of ingredients commonly used in the manufacture of methamphetamine, and active elements of the manufacturing process. We are confident that Short's conviction was not substantially swayed by the admission of the video in question.[16]

III. CONCLUSION.

For the foregoing reasons, we affirm Short's conviction and associated sentence.

All sitting. All concur.

---

[16] *Meece v. Commonwealth*, 348 S.W.3d 627, 645 (Ky. 2011).

COUNSEL FOR APPELLANT:

John Gerhart Landon
Assistant Public Advocate
Department of Public Advocacy

COUNSEL FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

David Bryan Abner
Assistant Attorney General